

WEBINAR WEDNESDAYS



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APPRENDI, RING, ALLEYNE, AND MORE: A REFRESHER ON JURY FINDINGS FOR SENTENCING PURPOSES IN ARIZONA

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Apprendi, Ring, Alleyne, and More

A Refresher on Jury Findings for Sentencing
Purposes in Arizona

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Objectives and Roadmap

- ▶ Review history of defendant's right to have a jury make findings in aggravation phase or at sentencing
 - ▶ Sixth Amendment requirement
 - ▶ Special statutory requirements in capital cases
- ▶ Caselaw update
 - ▶ When is a jury finding required in noncapital cases for sentencing purposes?
 - ▶ *McKinney v. Arizona* and the Sixth Amendment's scope in capital sentencing

Apprendi v. New Jersey, 530 U.S. 466 (2000)

- ▶ Details/background
- ▶ Rule: “Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. at 490

Ring (II) v. Arizona, 536 U.S. 584 (2002)

- ▶ Pre-2002 Arizona, judges found aggravation and imposed sentence, a procedure upheld in *Walton v. Arizona*, 497 U.S. 639 (1990)
- ▶ *Ring II* applied *Apprendi* to capital sentencing, overruling *Walton* “to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty. Because Arizona's enumerated aggravating factors operate as the functional equivalent of an element of a greater offense, the Sixth Amendment requires that they be found by a jury.” 536 U.S. at 609 (quotations and citation omitted)

Ring's aftermath

- ▶ Legislature revamped Arizona statutes
 - ▶ Significant changes
 - ▶ Jury determines aggravation (aggravation phase)
 - ▶ Jury determines appropriate sentence (penalty phase)
 - ▶ Change to appellate review: Arizona Supreme Court's independent review replaced by abuse of discretion
- ▶ *State v. Ring (III)*, 204 Ariz. 534 (2003)
 - ▶ Consolidated all defendants still pending on direct appeal when *Ring* issued
 - ▶ Resolved several overarching questions
 - ▶ Announced harmless-error review procedure for cases affected by *Ring II*

Blakely v. Washington, 542 U.S. 296 (2004)

- ▶ Details/background
- ▶ Court applied *Apprendi*'s rule
- ▶ Rule: Under mandatory state sentencing guidelines, the Sixth Amendment right to a jury trial prohibits judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant

Southern Union Co. v. United States, 567 U.S. 343 (2012)

- ▶ 6-3 decision
- ▶ Details/background
- ▶ Court applied *Apprendi* to the imposition of criminal fines
- ▶ Rule: There is no principled distinction between criminal fines and imprisonment for *Apprendi* purposes because *Apprendi* requires that any fact other than a prior conviction that increases penalty for a crime beyond statutory maximum must be submitted to a jury

Alleyne v. United States, 570 U.S. 99 (2013)

- ▶ Details/background
- ▶ Court applied *Apprendi* and progeny
- ▶ Rule: In line with *Apprendi*, all facts that *increase* a mandatory minimum sentence must be found by a jury

Application of *Apprendi*, *Blakely*, and *Alleyne* in Non-Capital Cases

Jury Finding Required

- ▶ **value of methamphetamine** for the purpose of increasing mandatory minimum fine under A.R.S. § 13-3407(H)
 - ▶ In addition to any other penalty prescribed by this title, the court shall order a person who is convicted of a violation of this section to **pay a fine of not less than one thousand dollars or three times the value as determined by the court** of the dangerous drugs involved in or giving rise to the charge, whichever is greater, and not more than the maximum authorized by chapter 8 of this title. A judge shall not suspend any part or all of the imposition of any fine required by this subsection.
- ▶ *State v. Angulo-Chavez*, 247 Ariz. 255 (App. 2019) (“In safeguarding a defendant’s due process and jury trial rights, the holdings in *Apprendi* and *Southern Union Company* require a specific finding by the jury as to any fact that increases a mandatory minimum criminal fine” - holding the statute is unconstitutional because it allows the value to be “determined by the court”)

Jury Finding Required

- ▶ Whether defendant's offenses were **committed on the same occasion** under A.R.S. § 13-703(A) for sentence-enhancement purposes
 - ▶ If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 13-702 for the first offense, as a category one repetitive offender for the second offense, and as a category two repetitive offender for the third and subsequent offenses.
- ▶ *State v. Ortiz*, 238 Ariz. 329 (App. 2015) (same occasion finding must be submitted to the jury)
- ▶ Requires jury to consider five factors: (1) time, (2) place, (3) number of victims, (4) whether crimes were continuous and uninterrupted, and (5) whether they were directed to the accomplishment of a single criminal objective. *State v. Kelly*, 190 Ariz. 532 (1997)

Jury Finding Required

- ▶ When a **defendant's release/parole status** exposes defendant to a sentence beyond the statutory minimum or maximum under A.R.S. §13-708(A)
 - ▶ A person who is convicted of any felony involving a dangerous offense that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or has escaped from confinement for conviction of a felony offense shall be sentenced to imprisonment for **not less than the presumptive sentence** authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served.
- ▶ *State v. Large*, 234 Ariz. 274 (App. 2014) (exception for prior convictions does not extend to include release status, and therefore *Apprendi* and *Alleyne* apply whenever release status exposes defendant to an increased minimum or maximum sentence)

Jury Finding Not Required

- ▶ whether victim is under 18 years old for purposes of imposing mandatory sex offender registration under A.R.S. § 13-3821(A)(3)
- ▶ *State v. Trujillo*, __ P.3d __ (Ariz. May 4, 2020) (holding *Apprendi* does not apply because “Arizona’s sex offender registration statutes are civil regulatory statutes, not criminal penalties” and *Apprendi* only applies to criminal penalties)

Jury Finding Not Required

- ▶ To impose a life sentence in deciding whether to sentence a defendant to life or natural life
- ▶ *State v. Togstad*, 2016 WL 3264132 (Ariz. App. June 14, 2016) (mem dec) (rejecting argument that *Alleyne* changed the legal landscape of sentencing in Arizona, and noting the Arizona Supreme Court held in *State v. Fell*, 210 Ariz. 554 (2005), that no jury finding beyond guilty verdict for first-degree murder is required to impose sentence of natural life)
- ▶ *Note: sentence for first-degree premeditated murder has required natural life sentence since 2012. Togstad case dealt with a 2008 crime*

Findings Inherent In Verdict

- ▶ In some circumstances, a fact that increases minimum or maximum sentence may not be required to submit to a jury if it is already inherent in the verdict
- ▶ In other words, no need to resubmit a finding for the jury's consideration if it already found the fact in its verdict

Findings Inherent In Verdict - Examples

- ▶ A finding that defendant's fraudulent schemes and artifices "involved a **benefit with a value of \$100,000 or more**" for purposes of making the defendant ineligible for probation under A.R.S. § 13-2310(C) is inherent in a verdict where verdict form finding defendant guilty of theft (which involved the same alleged conduct and resulted in the same alleged financial losses) contained a separate finding that "the value of the property was \$100,000 or more"
 - ▶ *State v. Viliborghi*, 2017 WL 3184541 (Ariz. App. 2017) (mem dec)
- ▶ **Dangerousness** (to determine whether dangerous-offender sentencing enhancement statutes apply) is inherent in a verdict finding defendant guilty of armed robbery
 - ▶ *State v. Larin*, 233 Ariz. 202 (App. 2013) ("armed robbery as charged was dangerous by its very nature")

Final Note On Prior Convictions

- ▶ As noted, the existence of a defendant's prior conviction(s) does not require a jury finding
- ▶ Judge may properly find prior convictions under A.R.S. 13-701(C), and (D)(11). If the court finds prior convictions, this “qualifies” the defendant for an aggravated sentence, and “the way” is “appropriately paved for the court to consider the ‘catch-all’ aggravator”
 - ▶ *State v. Bonfiglio*, 231 Ariz. 371 (2013)

Ring II's Application in Capital Cases

Scope of *Ring II*

- ▶ *Ring II* requires a jury finding of death-qualifying aggravating factors
- ▶ But Arizona provides a broader statutory right to jury findings. See A.R.S. 13-752(P) (“The trier of fact shall make all factual determinations required by this section or the Constitution of the United States or this state to impose a death sentence.”).

Ring II does not extend to the imposition of sentence

- ▶ Recent defense argument, seen often in federal court, is that *Ring II* requires a jury to weigh mitigation/aggravation and impose sentence
- ▶ *Murdaugh v. Ryan*, 724 F.3d 1104 (9th Cir. 2013): the absence of mitigation is a “fact” required to qualify defendant for the death penalty
 - ▶ Citing language in *Ring III* and A.R.S. 13-751(E)
 - ▶ Case involved Arizona Supreme Court’s finding of harmless *Ring* error; Ninth Circuit overturned and remanded for jury resentencing

Imposition of sentence (continued)

- ▶ *Hurst v. Florida*, 136 S. Ct. 616 (2016)
 - ▶ Found that Florida's sentencing scheme, which provided for an advisory jury verdict but permitted judges to find aggravation anew, violated *Ring II*
 - ▶ Defense attempted to expand *Hurst* to require jury imposition of sentence
- ▶ *McKinney v. Arizona*, 140 S. Ct. 702 (2020)
 - ▶ Clarifies that *Ring II* and *Hurst* only require jury findings of aggravation
 - ▶ “[I]n a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant sentencing range.” 140 S. Ct. at 707.

Ring II also does not require

- ▶ Jury finding of *Emmund/Tison* (degree of culpability) findings. *Ring III*, 204 Ariz. at 563-65
- ▶ Jury finding of prior conviction aggravating factors (13-752(F)(1) and (F)(2)). *Ring III*, 204 Ariz. at 556-57.
- ▶ Aggravating factors to be alleged in the charging document and supported by evidence of probable cause
 - ▶ *McKanney v. Foreman*, 209 Ariz. 268 (2004)
 - ▶ There is a procedural right to a probable-cause finding. See *Chronis v. Steinle*, 220 Ariz. 559 (2009).

Questions?

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